

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

### **I. DISPUTE**

1. a. Whether there should be additional reimbursement for dates of service, 8-13-01, 9-11-01, 10-18-01, and 5-8-02.
- b. The request was received on 8-2-02.

### **II. EXHIBITS**

1. Requestor, Exhibit I:
  - a. TWCC 60
  - b. UB-92
  - c. EOB/TWCC 62 forms/Medical Audit summary
  - d. Medical Records
  - e. Example EOBs from other Insurance Carriers
  - f. State Office of Administrative Hearing decisions
  - g. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
  - a. TWCC 60 and Response to a Request for Dispute Resolution
  - b. Methodology
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 9-11-02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 9-11-02. The response from the insurance carrier was received in the Division on 9-16-02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of A letter Requesting Additional Information is reflected as Exhibit III of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: Letter dated 9-5-02.  
"We feel that 25% - 32% paid on four lumbar epidural steroid injections is not fair or reasonable. We feel that (Carrier) should reimburse us more appropriately as \$397.80 does not cover our cost to perform these procedures....(Provider) contends that the fee

paid was not fair and reasonable because it is below the amount the majority of other insurance carriers are reimbursing and does not take into account all of the supplies and medications to treat this patient, the amount of time spent in the procedure room and other costs.... (Carrier) has unfairly reduced out bill when other worker's compensation carriers' have established that our charges are fair and reasonable."

2. Respondent: Letter dated 9-13-02.  
"This dispute involves the carrier's payment for dates of service 8/13/01, 9/11/01, 10/18/01 and 5/8/02. The requester billed \$5513.58 (total for dates of service 8/13/01, 9/11/01, 10/18/01 and 5/8/02); (Carrier) paid \$397.80 for each date of service (total paid for corresponding dates of service was 1591.20 [sic]). The requester believes it is entitled to an additional \$3922.38 (total for all dates of service). 1. There is no MAR for outpatient ASC services.... 7. (Carrier's) payment is consistent with the fair and reasonable criteria established in Section 413.011 (b) of the Texas Labor Code....In this dispute (Carrier) took the CPT code used by the surgeon, 62289, and applied its methodology to determine its fair and reasonable payment of \$397.80 for each date of service."

#### **IV. FINDINGS**

1. Based on Commission Rule 133.307(d) (1) (2), the only dates of service eligible for review are 8-13-01, 9-11-01, 10-18-01 and 5-8-02.
2. This decision is being written based on the documentation that was in the file at the time it was assigned to this Medical Dispute Resolution Officer.
3. Per the Requestor's Table of Disputed Services, the Requestor billed the Carrier \$1,249.44 for services rendered on 8-13-01, \$1,567.48 for services rendered on 9-11-01, \$1,234.45 for services rendered on 10-18-01 and \$1,462.21 for services rendered on 5-8-02.
4. Per the Requestor's Table of Disputed Services, the Carrier paid the Requestor \$397.80 for each date in dispute.
5. The Carrier's EOBs denied any additional reimbursement as "M – THE REIMBURSEMENT FOR THE SERVICE RENDERED HAS BEEN DETERMINED TO BE FAIR AND REASONABLE BASED ON BILLING AND PAYMENT RESEARCH AND IS IN ACCORDANCE WITH LABOR CODE 413.011 (B)."

Reaudit dated 1-29-02 for dates of service 8-13-01 – 10-18-01 reflected, "No additional payment is being made as the payment already made by (Carrier) has been determined to be fair and reasonable based on statistical studies of national data performed by (Carrier). Our fair and reasonable payment has also been made in accordance with the Texas Workers' Compensation Act and Rules."

Reaudit dated 7-16-02 for date of service 5-8-02 reflected, "No additional payment is being made as the payment already made by (Carrier) has been determined to be fair and

reasonable based on statistical studies of national data performed by (Carrier). Our fair and reasonable payment has also been made in accordance with the Texas Workers' Compensation Act and Rules."

6. According to the Table of Disputed Services, the amount in dispute for date of service 8-13-01 is \$851.64, \$1,169.68 for date of service 9-11-01, \$836.65 for date of service 10-18-01 and \$1,064.41 for date of service 5-8-02.

## **V. RATIONALE**

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgical center. The provider has submitted several examples of other Carrier's EOBs for charges billed for a similar procedure. The carrier has submitted documentation asserting that they have paid a fair and reasonable reimbursement. Respondent has submitted an explanation of their payment methodology.

Per Rule 133.304 (i), "When the insurance carrier pays a health care provider for treatment(s) and/or service(s) for which the Commission has not established a maximum allowable reimbursement, the insurance carrier shall:

1. develop and consistently apply a methodology to determine fair and reasonable reimbursement amounts to ensure that similar procedures provided in similar circumstances receive similar reimbursement;
2. explain and document the method it used to calculate the rate of pay, and apply this method consistently;
3. reference its method in the claim file; and
4. explain and document in the claim file any deviation for an individual medical bill from its usual method in determining the rate of reimbursement."

The response from the carrier shall include, per Rule 133.307 (j) (1) (F), "... if the dispute involves health care for which the Commission has not established a maximum allowable reimbursement, documentation that discusses, demonstrates, and justifies that the amount the respondent paid is a fair and reasonable rate of reimbursement in accordance with Texas Labor Code 413.011 and §133.1 and 134.1 of this title;"

The carrier, asserts in their methodology, that they have paid a fair and reasonable reimbursement for all dates in dispute. The carrier indicates in their methodology that two national resources are utilized in determining a fair and reasonable reimbursement, "...1) ASC charges as listed by CPT code in '1994 ASC Medicare Payment Rate Survey' and 2) ASC Group payment rates as determined by the Secretary of the U.S. Department of Health and Human Services for surgical procedures by CPT code....(Carrier) used this data in the following manner; 1) The payment rate for the service in dispute, as defined by the CPT code, is determined using

Medicare's ASC Group rates. 2) The median charge from ASCs, weighted by total volume, is determined for the service group. 3) The co-payment amount is determined by multiplying the median weighted facility charge by 20%. 4) The dollar amounts from B.1) and B.3) above are summed to determine the fair and reasonable payment for the service." The carrier then took the CPT code 62289 used by the surgeon and applied the above methodology to arrive at \$397.80 payment for each date of service.

Due to the fact that there is no current fee guideline for ASC's, the Medical Review Division has to determine, based on the parties' submission of information, which has provided the more persuasive evidence of what is fair and reasonable. The Respondent has submitted its methodology. However, as the requestor, the health care provider has the burden to provide documentation that "...discusses, demonstrates, and justifies that the payment being sought is fair and reasonable rate of reimbursement..." pursuant to TWCC Rule 133.307 (g) (3) (D). The law or rules are not specific in the amount of evidence that has to be submitted for a determination of fair and reasonable. In this case, the Requestor's example EOBs are reflective of reimbursements received from other carriers, however, the Requestor fails to define how this information discusses, demonstrates and justifies that the payment being sought represents a fair and reasonable charge for the dates in dispute. Therefore, **no additional** reimbursement is recommended.

**REFERENCES:** The Texas Workers' Compensation Act & Rules: Sec 413.011 (d); Rule 133.304 (i); Rule 133.307 (g) (3) (D); and (j) (1) (F).

The above Findings and Decision are hereby issued this 16<sup>th</sup> day of April, 2003.

Lesa Lenart  
Medical Dispute Resolution Officer  
Medical Review Division